WP(C) 2913/2003
BEFORE
THE HON'BLE MR. JUSTICE P.G. AGARWAL
THE HON'BLE SMT. JUSTICE A. HAZARIKA
Heard Mr. K. N. Choudhury, learned counsel appearing for the writ petitioner and Mr. M. Sarania, learned counsel appearing for the respondents applicants.

2. The Indian Council of Agricultural Research (for short ICAR) set up/established a Farm House in the state of Meghalaya where casual labourers were recruited from different parts of the North East Region to look after the day to day works. The respondents-applicants, 68 in number, were so engaged in the year 1976-1984 on different dates. There was some dispute between the workers and the ICAR leading to declaration of lockout and subsequently, ICAR asked for undertaking from the concerned employees and later on services of the employees were terminated in the year 1986. The respondents/applicants filed a writ petition being Civil Rule No.712/1986 which was subsequently transferred to the Central Administrative Tribunal, Guwahati and was renumbered and registered as G.C. No.112/1987 and it was disposed. The respondents again approached the Central Administrative Tribunal by way of O.A. No.230/93. The said O.A. No.230/93 was withdrawn by the applicants and another O.A. No.174/97 was filed subsequently in the said case. The Tribunal directed the present writ petitioners (ICAR) to consider the representation dated 27.8.1994. Thereafter, the writ petitioners vide order dated 24.6.1999, dismissed the said representation whereupon O.A.175/2001 was filed before the Tribunal by the respondents applicants for setting aside the order dated 24.6.1999 and to provide the applicants benefits given to the other employees in G.C. No.112/1987. It is mentioned here that some other causal employees, who were also subjected to termination, had approached the Tribunal in G.C. No.112/1987 wherein direction was given for reinstatement of those employees with all service benefits. The said order was complied with by ICAR by issuing a notification dated 22.4.1990 asking all employees, whose services were terminated, to report for duty. Admittedly, the present respondents did not report for duty pursuant to the said notifications. It is submitted by Mr. Sarania that the applicants had no information.

3. Vide impugned judgment/order the Tribunal held that the applicants being similarly situated persons as that of applicants in G.C. No.112/1987, are entitled to get the benefits and the above stand of ICAR denying the benefits cannot be accepted. The Tribunal, therefore, provided as follows:

> The respondents are accordingly directed to reinstate the applicants and provide them the benefits arising form the reinstatement. We, however, make it clear that the applicants stall not be paid the backwage from the reinstatement. The applicants will be entitled for the entire benefits for the purpose of seniority, promotion and retiral benefits with the continuity of service. The respondents are directed to fix the pay of the applicants notionally.

4. Hence, the present writ petition by ICAR. The case of the writ petitioners is that, pursuant to the said direction in G.C. No.112/87, the ICAR had published notifications dated 22.4.1990 and 23.4.1990 allowing the casual workers to resume their duty with immediate effect. But the respondents had failed to comply with the above directions. Moreover, the scheme for regularization has been made in the year 1993 in respect of the persons, who were serving employees as on 1.9.1993. As the respondents were not subsisting employees, benefits of the said scheme cannot be given to them. There is no dispute at the Bar that the respondents/applicants did not resume their duty pursuant to the notifications dated 22.4.1990 and 23.4.1990. Mr. Sarania has also submitted that although 68 applicants had joined together initially, at present 20 of the applicants are not interested to pursue their claim only 48 applicants remain.

5. The next submission of the petitioners is that the ICAR even tried to help these respondents applicants by submitting a proposal for creation of

100 nos. of posts but the proposal has not been considered by the Finance Department, Govt. of India till today. There is no existing vacancy to accommodate the respondents. Annexure-J has been filed by the petitioners to show that though the number of sanctioned post is 137, 139 staffs are working and as such two persons are in excess, who are required to be adjusted against the future vacancies.

6. The law regarding absorption, regularization, or permanent continuance of temporary, contractual, casual, daily-wage or ad-hoc employees were settled by the Constitution Bench of the Apex Court in the case of Secretary, State of Karnataka and others vs- Uma Devi and others, reported in 2006 (4) SCC 1. In the above case, the Apex Court held that the theory of legitimate expectation does not apply in the case of any temporary employee in casual work without proper selection as recognized by the rules or procedure. Right of such employees for regularization was not held to be created as it would amount to impropriety and illegality in the matter of public employment.

7. In the present case, we find that the respondents/applicants were engaged as casual workers in 1980 and they continued till 1986. For last twenty years they are not employees in ICAR and admittedly they must have made alternative arrangement for their livelihood by somehow and in view of that, the Tribunal did not grant them back wages. As the regularization can be made against the existing vacancies/posts only and in view of the statement made by the petitioners that no vacancy exists as on today, we propose to modify the directions issued by the Tribunal in the light of the fact that similarly situated persons were given certain benefits in G.D. No.112/87 which had been complied with by the petitioners. The ICAR shall maintain a proper list of the respondents-applicants and whenever any vacancy arises to which the respondent-applicants are eligible, the posts should be offered to them. This shall be considered for appointment along with others but preference will be given to these employees which would be on the basis of the seniority in the matter of appointment to the casual post.

8. We further provide that in case ICAR need causal workers at any point of time, the case of the respondent-applicants shall be given first preference and the casual work may be offered to them. The question of regularization shall be considered on merit against the existing/available vacancy only.

9. In case, the respondents are found to be over aged, their case for relaxation shall be considered as per the rules and regulations.